REMARKS

This application was the subject of an Appeal to the Board of Patent Appeals and Interferences filed March 11, 2005. The Appeal Brief was originally filed on May 4, 2005. In response to a Notification of Non-Compliant Appeal Brief, telephonic discussions were had with the Examiner, Mr. Daniel Felten, and it was determined from those discussions that the Notice of Non-Compliant Appeal Brief was rendered in error. The Appeal Brief was re-submitted on August 18, 2005. Now, the Examiner reopens the prosecution of the application "to address issues in the Appeal brief".

The Examiner begins by saying that the "Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection". More specifically, the Examiner has reconsidered his rejection of claims 1–11 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,449,601 to Friedland et al. and, therefore, by implication has withdrawn that ground of rejection which was the subject of the appeal.

The Examiner now rejects claims 1–11 under 35 U.S.C. §103(a) as being unpatentable over the patent to Friedland et al. in view of the newly cited U.S. Patent No. 6,134,589 to Hultgren. This rejection is respectfully traversed for the reason that the combination of Friedland et al. and Hultgren fails to teach or otherwise suggest the claimed invention.

Although the Examiner states that the arguments presented in the Appeal Brief are moot, in fact they are not since the Examiner continues to rely on Friedland et al. as his primary reference. Therefore, the arguments as presented in the Appeal Brief as to Friedland et al. are incorporated herein by reference. As pointed out in the Appeal Brief, the Examiner is attempting to reason that the Friedland et al. reference shows something it does not show under the guise that this is a "broad" reading of the reference. As pointed out in the Appeal Brief, Friedland et al. does not show a <u>distributed</u> processing auction as is contemplated by each of the independent claims, where there is both a computer implemented "current local winner" determination and a computer implemented "global winner determination" made based on the candidate winning bids <u>at each of the nodes</u>.

Rather, Friedland shows a single server system.

The Examiner states in his rejection that "Friedland discloses a method for processing auction traffic using one or more sewers [sic] at a plurality of nodes in a distributed processing system (see Friedland, fig. 3, Abstract) using a current local winner determination method at each of the nodes to identify and [sic] candidate winning bids (see Friedland, col. 13, ll. 63 to col. 14, ll. 43),. and using a current global (remote) winner determination method to determine from the candidate winning bids from each of nodes a current set of winners (see Friedland, col. 3, ll. 10-67)." As stated above, this characterization of Friedland et al. is simply not true. Figure 3 of Friedland et al. shows but one server, which is the DLA auction server 312, and although this server may be physically implemented by one or more high-end server PCs, workstations, mini-computers, or mainframes (col. 8, lines 10–12), it is still only one logical server. There are not a plurality of nodes, and there is no suggestion of a "current local winner" or a "global winner determination" as recited in claim 1.

Having made the statement that "Friedland discloses a method for processing auction traffic using one or more sewers [sic] at a plurality of nodes in a distributed processing system", the Examiner then states that "Friedland also fails to disclose a distributed processing network per se" and relies on Hulgren for a disclosure of "a distributed processing network between an origination node and a destination node which considers bids via a bid processor", citing element 220 and col. 4, lines 10+ of Hultgren. Now it can not be that Friedland et al. both discloses a distributed processing system and does not disclose a distributed processing system. Clearly, the Examiner has withdrawn this application from appeal because Friedland does <u>not</u> disclose a distributed processing system.

Hultgren pertains to tele/datacommunications networks, and particularly to obtaining quality connections over such networks. A network connection between an origination node and a destination node is dynamically determined and established during a tele/datacommunications session. At commencement of the session the originating node provides (I) an address of the destination node, and (ii) a set of prescribed quality connection parameters. During the session, the set of prescribed quality connection parameters is used by a quality connection server to

determine an acceptable sequence of links between the originating node and the destination node. In accordance with the determination, the quality connection server sets up connections over the acceptable sequence of links whereby data packets are transmitted between the originating node and the destination node during the session. (Col. 1, lines 53–65). The Examiner specifically relies on col. 4, lines 10–21, of Hultgren:

> "An intermediate node, such as a node 24N or a node 24T, has a configuration partially represented by FIG. 4. In particular, FIG. 4 shows portions 200 of an intermediate node involved with quality connection reservation and execution. An interface 210 is provided for connection to the network which communicates with QSC server 20. Connected to network interface 210 are a message decoder 212 and a message encoder 214. A bid processor 220 is connected to send inquiries to and receive responses from each of statistical analyzer 230, traffic manager/scheduler 232, and bit error rate tester 234. Traffic manager/scheduler 232 is connected to scheduler database 240."

The Examiner also refers to element 220, the bid processor, shown in Figure 4. Apparently the Examiner has read no further than the word "bid", but reading on at col. 10, lines 5–19, there is the following explanation:

> "The bid message developed by bid processor 220 includes the quality parameters which the intermediate node proffers for the solicited link. In determining these parameter for development of the bid message, bid processor 220 sends inquiries to each of statistical analyzer 230, traffic manager/scheduler 232, and bit error rate tester 234. Traffic manager/scheduler 232 is consulted to determine minimum bandwidth (MinBW-B) available on the link; a maximum cost per minute (MaxCPM-B) for the link; and the time for which any reservation on the link can be guaranteed or bid remain open (PERIOD). The statistical analyzer 230 is consulted to determine a maximum delay per packet (MaxDPP-B) on the link and a maximum delay variation (MaxDV-B) for the link. Bit error rate tester 234 is consulted to determine the maximum error rate (MaxERR-B) on the link."

In other words, the Quality of Service and Charging (QSC) server 20 shown in Figure 1, and in more detail in Figure 2, determines the acceptable sequence of links by consulting a link current status database 85 and/or sending solicitations for bids to a plurality of nodes intermediate the origination node 30-1 and the

destination node 40. Figure 4 is an example of an intermediate node. Bids received in response to the solicitations are processed to determine the acceptable sequence of links. The acceptable sequence of links can comprise links which constitute differing networks. For example, some of the links included in the acceptable sequence of links are links of a data network 22N and others of the links included in the acceptable sequence of links are links of a public switched telephony network (PSTN) 24T.

The Hultgren reference is clearly not relevant to the live auction which collects bids from remote bidders as disclosed by Friedland et al., nor is it relevant to the claimed distributed method of processing auction traffic. The Examiner has not read the Hultgren reference as a whole and has not demonstrated why one skilled in the art would be lead to attempt to combine the teachings of Hultgren with that of Friedland et al. as is required to make out a *prima facie* case of obviousness.

The Examiner also states that "Friedland fails to disclose identifying loser bids. However, it would be obvious to an artisan at the time of the invention to recognize that the determination of winning bids (or winning candidates) would include a determination of which bids are losers and should be filtered out." Applicant disagrees that a determination of winning bids necessarily includes a determination of which bids are losers. The Examiner has failed to recognize the thorough explanations of the term "current local winner determination method" (Claim 1, line 4) and "current global winner determination method" (Claim 1, line 6), which take up the major part of the Specification and which may be found in the Specification at page 6, line 24 – page 13, line 22 and at Figures 2, 3, 4, 5, 6, and 7. Friedland et al. does not have a distributed system, does not determine local winners and does not determine global winners from the set of local winners. The claimed invention determines loser bids in a "current local winner determination" (not taught by Friedland et al.) in order to withhold loser bids from processing in a "current global winner determination" (not taught by Friedland et al.), all of which is integral to the distributed bid processing method claimed by Claim 1 and wholly absent from the disclosure of Friedland et al.

With reference to claim 2, the Examiner alleges that "Friedland discloses wherein the auction is an open-cry auction (see Friedland, Abstract fig. 3. col. 7, ll. 61+)". Col. 7, line 61, to col. 8, line 9, of Friedland et al. is as follows:

> "FIG. 3 illustrates, at a high level, the DLA methodology for implementing Internet-based live auctions. The live auction occurs in front of a live audience of bidders 302. The auction is conducted by one or more auctioneers 304. A DLA human proxy 306 is also present within the in-person audience of bidders. The DLA human proxy 306 monitors the auction, including bids made by in-person bidders as well as statements made by the auctioneer 304, and enters the bids and statements into the DLA auction console running on a computer system 308. In a preferred embodiment, a laptop PC may be used to run the DLA auction console for reasons of ease of use and portability. The information regarding the status of the auction entered by the DLA human proxy 306 into the DLA auction console running on the computer 308 is transferred via the Internet 310 to the DLA auction server 312."

This description is clearly not what is being claimed. Note that there is a both a human proxy 306 and an auctioneer 304 in the Friedland et al. system.

With reference to claim 3, the Examiner alleges that "Friedland discloses wherein the current local winner determination method comprises the steps of receiving a new bidtv,q) [sic] at a node, where v denotes the price per unit and q denotes the quantity desired (see Friedland, col. 5, ll. 13+, col. 1, ll. 60+), checking to see if the new bid ranks in the top (n/q) bids, in terms of price/unit bid value, amongst all the bids asking for quantity q whose information is available to this process, where (xJ stands for the greatest integer less than or equal to x (see Friedland, col. 2, ll. 12+); taking the new bid along with the set of (N/qJ bids that have been processed and determining a new set of top (N/q) bids (see Friedland, col. 17, ll. 3+), determining if bidtv,q) is in the top (N/qJ bids and, if it is not, and declaring it a loser bid, but if so, declaring it a candidate bid (see Friedland, col. 17, ll. 3+)." The Examiner makes similar allegations with respect to independent claims 6 and 9.

With regard to independent claims 3, 6, and 9 (which are distinguished

from Friedland et al. for the same reasons noted above for claim 1), the Examiner has incorrectly found the terms "bid(v,q)" and "$\lfloor N/q \rfloor$ bids" to be suggested by the disclosure of Friedland et al. The significance and meaning of the terms "bid(v,q)" and "$\lfloor N/q \rfloor$ bids" is defined in the express language of Claims 3, 6, and 9:

> receiving a new bid(v,q) at a node, where v denotes the price per unit and q denotes the quantity desired; and
>
> checking to see if the new bid ranks in the top $\lfloor N/q \rfloor$ bids, in terms of price/unit bid value, amongst all the bids asking for quantity q whose information is available to this process, where N is a number of copies of a single item on sale.

The claim language is not suggested by the portions of the disclosure of Friedland et al. cited by the Examiner in support of his rejections, which simply speak generically of "bids."

With reference to claim 4, the Examiner alleges that "Friedland further discloses comprising the steps of holding the candidate bid at the node for a time, T; and if by time T, through an arrival of another bid, a candidate bid loses its position amongst the top (N/q) highest bids, declaring the bid a loser bid (see Friedland, col. 17, ll. 3 to col. 18, ll. 2)." Since the Examiner has already admitted that Friedland et al. does not disclose a distributed processing system with a plurality of nodes, the Examiner's position is clearly in error. Moreover, the cited passage of Friedland et al. does not support the Examiner. Col. 17, line 3, to col. 18, line 2, is as follows:

> "FIG. 15 is a flow control diagram of that portion of the collector/redistributor node related to the carrying out of one or more simultaneous live auctions over the Internet by the DLA. The collector/redistributor essentially waits, in an endless loop, for one of a number events to occur, and handles each event that occurs. If the collector/redistributor is a first-line collector/redistributor, and the collector/redistributor receives a bid message from a remote bidder, as detected in step 1502, the collector/redistributor checks, in step 1504, the auction ID and lot ID against a list of current auctions and their respective current lot numbers to determine whether the bid is valid. Also in step 1504, the collector/redistributor checks the bid amount contained in the bid field of the bid message against the current high bid received for the identified lot of the identified auction. Only if the bid is higher than the current highest bid for the identified auction, as detected

by the collector/redistributor from bid messages received from other remote bidders or from status messages received from the DLA auction server, will the collector/redistributor forward the bid on to the DLA auction server. If the bid is valid and represents a higher bid, as detected in step 1506, the collector/redistributor submits the bid to either a next-highest-level collector/redistributor or to the DLA auction server in step 1508, after which the collector/redistributor continues to wait for another event. On the other hand, if the bid does not pass the filter, as detected in step 1506, the collector/redistributor simply resumes waiting for another event. The collector/redistributor node may employ a hash table containing auction ID, lot ID, and high bid triples in order to facilitate rapid filtering of a bid. If the collector/redistributor receives a status message from the DLA auction server program, as detected in step 1510, the collector/redistributor calls the routine "process status" in step 1512 to process the status message, and then resumes waiting for another event. If the collector/redistributor is a first-line collector/redistributor, and the collector/redistributor receives a request from a DLA client program to connect to an ongoing auction, as detected in step 1514, the collector/redistributor validates the DLA client program against the validation database in step 1516. If the DLA client program, and remote bidder that has invoked it, is properly authorized, as detected in step 1518, the collector/redistributor accepts the connection and places a unique client identifier associated with an auction ID into an active client list in step 1520, and then resumes waiting for another event. If, on the other hand, the collector/redistributor determines that the client is not authorized to participate in the desired auction, as detected in step 1518, then the collector/redistributor refuses the connection request in step 1522 and resumes waiting for another event. If the collector/redistributor receives a client request to terminate connection to an auction, as detected in step 1524, the collector/redistributor removes the client from the active client list in step 1526 and resumes waiting for another event. If the collector/redistributor receives a message from the DLA auction server indicating that an auction has finished, as detected in step 1528, the collector/redistributor removes the auction ID from the list of active auction ID's in step 1530 and then resumes waiting for another event. If the collector/redistributor receives an auction starting message from the DLA auction server, as detected in step 1532, the collector/redistributor adds the ID of the starting auction to a list of active auction ID's in step 1534, and then resumes waiting for another event. On the other hand, if none of the above-mentioned events are identified, as indicated by the negative output in step 1532, the collector/redistributor simply continues to wait for another event."

Friedland et al. does <u>not</u> disclose "the steps of holding the candidate bid at the

node for a time, T; and if by time T, through an arrival of another bid, a candidate bid loses its position amongst the top (N/q) highest bids, declaring the bid a loser bid", as the Examiner alleges.

With reference to claim 5, the Examiner alleges that "Friedland discloses wherein the current global winner determination method comprises the steps of receiving new candidate winning bid from a node bidtv,q) [sic] (see Friedland, col. 3, ll. 23-29-, and col. 16, ll. 3 to col. 18, ll. 2), taking the candidate winning bid along with the set of all bids that have been processed and determines a new set of winners (see Friedland, col. 3, ll. 23-29., and col. 17, ll. 3 to col. 18, ll. 2), determining whether the new candidate bidtv,q) [sic] is a winner (see Friedland, col. 3, ll. 23-29-, and col. 17, ll. 3 to col. 18, ll. 2)-, and notifying the bidder of bidtv,q) [sic] as to whether they are a winner (see Friedland, col. 3, ll. 23-29-, and col. 17, ll.3 to col. 8, ll. 2)." See again the quote from Friedland et al. above. As is clear from reading Friedland et al., there is no such disclosure in the reference.

With reference to claim 6, the Examiner alleges that "Friedland discloses wherein the current local winner determination method comprises the steps of receiving a new bidtv,q) [sic] at a node, where v denotes the price per unit and q denotes the quantity desired (Friedland, col. 5, ll. 13+., and col. 1, ll. 60+), considering a set of bids using a set of pre-specified auction rules and selecting winners for auctioning N+x copies of the item on sale; and determination whether the bidtv,q) [sic] is a candidate winner bid (see col. 2, ll. 12+., col. 13, ll. 23+)." As demonstrated above in the comments with respect to claim 3, Friedland et al. do not disclose "using a current local winner determination method at each of the nodes to identify loser bides and candidate winning bids . . . [and] using a current global winner determination method to determine from the candidate winning bids from each of the nodes a current set of winners", as specifically recited in claim 6.

With reference to claim 7, the Examiner alleges that "Friedland discloses wherein the current global winner determination method comprises the steps of: receiving new candidate winning bid from a node bidtv,q) [sic] (see col. 3, ll. 10-67), taking the candidate winning bid along with the set of all bids that have been processed and determines a new set of winners (see col. 3, ll. 10-67), determining whether the new candidate bidtv,q) [sic] is a winner (see col. 3, ll. 10-67), and

notifying the bidder of bidtv,q) [sic] as to whether they are a winner (see col. 3, ll. 10-67)." Col. 3, lines 10–67, of Friedland et al. are as follows:

> "Each remote bidder interacts with a client program running on a remote computer. The client program allows the remote bidder to log into a distributed live auction ("DLA") system in order to register as a remote bidder for a particular live auction. At the time that the live auction is conducted, the remote bidder interacts with the client program on the remote computer in order to follow the course of the real-time, live auction, and to submit bids. The remote bidder receives status updates concerning the bidding, lot state, and lot sequencing from the live auction via a graphical user interface provided on the remote computer by the client program, and may interact with the graphical user interface in order to submit bids for a particular lot.
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> "The collector/redistributor nodes are heirarchically interconnected and serve to efficently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server, and also serve to effeciently broadcast status messages concerning the live auction received from the auction server to a large number of remote client programs running on remote computers.
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> "The auction server is a centralized connection point that interconnects collector/redistributor nodes, on-site auction consoles, and a database that computationally mirrors the states of one or more live auctions and that stores detailed information about both on-going and upcoming auctions. The auction server is the focal point for collecting bids from remote bidders and for distributing status information about one or more concurrent live auctions to remote bidders. Moreover, the auction server manages extensive information about current and future auctions, including detailed inventory lists and lot assignments. The auction server is directly connected to root-level collector/redistributor nodes and is also connected, via the Internet, to one or more auction consoles.
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> "The auction console is a program running on a computer, often a laptop computer, that interacts with a human proxy in the audience of the live auction. The human proxy is notified of bids from remote bidders via the auction console program and may submit bids to the auctioneer during the auction process. The human proxy monitors the auction, reports changes in the state, such as successful bids or sales, as well as changes in the lot sequence or assignments via the auction console program to the auction server.
>
> "The DLA solves the problems associated with distributing a real-time, live auction using a combination of technologies, communications protocols, software programs, human proxies, centralized databases, and auction management methodologies. In particular, the human proxy is able to monitor and interact with the

> auction process in real-time, as well as monitor and report changes in lot sequences and assignments. The DLA architecture provides an efficient extremely fast medium for distributing status information about an auction to a large number of remote bidders and for collecting bids from remote bidders and presenting them to the auctioneer. The present invention thus provides a method for bringing the excitement and time efficiency of a live auction to remote bidders over the Internet."

From the foregoing, it is clear that Friedland et al. do not disclose "receiving new candidate winning bid from a node bid(v,q); taking the candidate winning bid along with the set of all bids that have been processed and determining a new set of winners; determining whether the new candidate bid(v,q) is a winner or a loser; and notifying the bidder of bid(v,q) as to whether they are a winner or loser", as specifically recited in claim 7.

In reference to claim 8, the Examiner states "The notoriously old and well know Descending auctions or 'Reverse actions [sic]' are those in which bid price for an item decreases rather than increases for each round of bidding." The Examiner then states that "Official notice is taken of descending auctions because an adisan [sic] at the time of the invention would have found that the employment of a descending auction would have been an obvious extension to the teaching of Friedland being an obvious alternative to high bid auctions and thus an obvious expedient well within the ordinary skill in the art." The Examiner is referred to MPEP 2144.03 concerning the propriety of taking Official Notice of well known facts.

The standard of review applied to findings of fact is the "substantial evidence" standard under the Administrative Procedure Act (APA), and the substantial evidence standard of review is applied to USPTO Board decisions. Official Notice without documentary evidence to support an examiner's conclusion is permissible *only* in some circumstances. Official Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be

"capable of such instant and unquestionable demonstration as to defy dispute". In the present case, the Examiner has not clearly articulated what facts he takes Official Notice of. Assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.

In his statement, the Examiner seems to be taking Office Notice of what amounts to a conclusion of obviousness rather than fact, and this is clearly improper. Therefore, Applicant traverses the Official Notice taken by the Examiner and asserts that in the claimed art directed to a distributed method for processing auction traffic using one or more servers at a plurality of nodes in a distributed processing system is an esoteric technology and facts not directly related to that technology are not the proper subject of Official Notice.

With reference to claim 9, the Examiner alleges that "Friedland wherein the current local winner determination method comprises the steps of receiving a bid (q) for processing, where q is the quantity desired at going price p (see Fried land, col. 2, ll. 12+-, and col. 3, ll. 23+), determining whether the bid is in the first (R/qJ [sic] bids, asking for quantity q at price p, where (x) stands for the greatest integer less than or equal to x and R is a currently remaining quantity on auction (see Friedland, col. 2, ll. 12+,. and col. 3, ll. 23+)., if the bid is in the first (R/qJ [sic] bids, asking for quantity q at the going price p, then declaring the bid a candidate winner bid; and making the candidate winner bid available for further processing by the current global winner determination method (see Friedland, col. 2, ll. 12+-, and col. 3, ll. 12+)." As described above with respect to claim 3, it is clear that Friedland et al. do not disclose the features specifically claimed.

With reference to claim 10, the Examiner alleges "further comprising the steps of giving bids processed by the method a time stamp of arrival', and determining whether the time step, if it exists on the bid, is greater than or equal to the time stamp of any bid, asking for quantity q at going price p, that has been processed by the method in the past (see Friedland, col. 2, ll. 12+,. and col. 3, ll. 23+)". Col.2, lines 12–42, of Friedland et al. is as follows:

"There are different types of lots, as mentioned above.

Choice lots include a collection of goods or services. The auctioneer initiates bidding on a choice lot on a per-item price basis, eventually establishing a price point. The high bidder may select which items he or she wants from the inventory at that price point. The auctioneer offers the remaining inventory to the floor at the price-point value. If any items in the lot remain unsold, the auctioneer has the option of re-initiating bidding on a new lot comprising the unsold items, or passing and moving on to the next lot. Quantity lots comprise many identical items. As with choice lots, quantity lots involve establishing price points, although these price points typically have minimum quantities associated with them. The auctioneer first establishes a minimum quantity for a quantity lot, and then initiates bidding to establish a per-item price point. The high bidder may select the minimum quantity or may select more items at that price point. The auctioneer offers the remaining inventory to the floor at that minimum quantity and price point. If any inventory remains, the auctioneer establishes a new minimum quantity for the quantity lot, and then again initiates bidding to establish a per-item price point. The price points in quantity lots typically decrease as the minimum quantity constraint increases, allowing the auctioneer to sell small numbers of units at retail-lie values and large numbers of units at wholesale-like values within the same lot. A particular advantage to distributing a live auction over a communications medium, such as the Internet, is that, by bringing many thousands of Internet bidders to the auction, virtual bidders can have a huge impact on quantity lot pricing, with a far greater percentage of the inventory bid for and sold at retail-like values than at a conventional live event."

Col. 3, lines 23–67, of Friedland et al. is as follows:

> "The collector/redistributor nodes are heirarchically interconnected and serve to efficently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server, and also serve to effeciently broadcast status messages concerning the live auction received from the auction server to a large number of remote client programs running on remote computers.
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> "The auction server is a centralized connection point that interconnects collector/redistributor nodes, on-site auction consoles, and a database that computationally mirrors the states of one or more live auctions and that stores detailed information about both on-going and upcoming auctions. The auction server is the focal point for collecting bids from remote bidders and for distributing status information about one or more concurrent live auctions to remote bidders. Moreover, the auction server manages extensive information about current and future auctions, including detailed inventory lists and lot assignments. The auction server is directly connected to root-level collector/redistributor nodes and is also connected, via the
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> "The auction console is a program running on a computer, often a laptop computer, that interacts with a human proxy in the

> audience of the live auction. The human proxy is notified of bids from remote bidders via the auction console program and may submit bids to the auctioneer during the auction process. The human proxy monitors the auction, reports changes in the state, such as successful bids or sales, as well as changes in the lot sequence or assignments via the auction console program to the auction server.
>
> "The DLA solves the problems associated with distributing a real-time, live auction using a combination of technologies, communications protocols, software programs, human proxies, centralized databases, and auction management methodologies. In particular, the human proxy is able to monitor and interact with the auction process in real-time, as well as monitor and report changes in lot sequences and assignments. The DLA architecture provides an efficient extremely fast medium for distributing status information about an auction to a large number of remote bidders and for collecting bids from remote bidders and presenting them to the auctioneer. The present invention thus provides a method for bringing the excitement and time efficiency of a live auction to remote bidders over the Internet."

It is clear from reading Friedland et al. that the reference does not show or suggest the limitations of claim 9, on which claim 10 is dependent, much less the additional limitations of "giving bids processed by the method a time stamp of arrival; and determining whether the time stamp, if it exists on the bid, is greater than or equal to the time stamp of any bid, asking for quantity q at going price p, that has been processed by the method in the past", as recited in claim 10.

With reference to claim 11, the Examiner alleges that "Bidders submit multi-item bids and the bids may be indivisible (see Friedland, col. 8, ll. 10-50)." Col. 8, lines 10–50, of Friedland et al. is as follows:

> "The DLA auction server 312 may be implemented on one or more high-end server PCs, workstations, mini-computers, or mainframes. The DLA auction server 312 incorporates the incoming status information from the DLA human proxy 306 into a database representation of the instantaneous state of the auction, and, at the same time, broadcasts status updates via the Internet 314 to a number of remote bidders 316-319. The remote bidders 316-319 monitor the live auction via the status information broadcast from the DLA auction server 312, and may also listen to the auction via real-time audio broadcast of the live auction or watch the auction via real-time video broadcast of the live auction

> captured by one or more recording devices (not shown) and transmitted to the remote bidders via the Internet or possibly through other communications media, including cable TV and radio. The remote bidders may submit bids for particular items in real-time, just as if they were present, in-person, in the audience 302.
>
> "Remote bidders submit a bid via the DLA client program running on the remote bidders' computer system, for example computer system 320, which are then transmitted via the Internet 314 to the auction server 312. Remote bids are filtered and verified by the DLA system so that only valid bids from authorized remote bidders are transmitted by the DLA auction server 312 to the DLA human proxy 306 via the Internet 310 and the DLA auction console running the DLA human proxy's computer DLA 308. Upon receiving a remote bid from a remote bidder, the DLA human proxy 306 may then interact with the auctioneer 304 to submit the bid. If the bid is accepted, that fact, like any other status information concerning the live auction, is submitted by the DLA human proxy 306 via the DLA auction console running on the DLA human proxy's computer 308 and the Internet 310 to the DLA auction server 312 for subsequent broadcast to the remote bidders 316-319. In order for the remote bidders to effectively participate in the live auction, the remote bidders need to receive status updates from the live auction in time periods on the order of a second or less, and, in the same time interval, need to be able to submit bids that appear on the DLA auction console running on the DLA human proxy's computer 308."

It is clear from the above that Friedland et al. do <u>not</u> disclose the limitations of claim 1, on which claim 11 is dependent, nor do Friedland et al. disclose the limitation of claim 11.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 1–11 be allowed, and that the application be passed to issue. In the alternative, it is requested that the Appeal be reinstated and the Examiner's rejection as made in the Office Action mailed November 4, 2005, be made by Examiner's Answer, which rejection will be responded to by Reply Brief.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

A provisional petition is hereby made for any extension of time necessary

for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

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